

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

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UNITED STATES OF AMERICA,  
and STATE OF MISSOURI

Plaintiffs,

and

NADIST, LLC

Plaintiff/Intervenor

v.

THE DOE RUN RESOURCES  
CORPORATION,  
THE DOE RUN RESOURCES  
CORPORATION d/b/a "THE DOE RUN  
COMPANY"; and  
THE BUICK RESOURCE RECYCLING  
FACILITY, LLC

Defendants.

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Civil Action No. 4:10-cv-1895 JCH

**DECLARATION OF DONALD TOENSING IN SUPPORT OF  
JOINT MOTION OF THE UNITED STATES AND MISSOURI  
TO ENTER PROPOSED FIRST AMENDMENT TO THE CONSENT DECREE**

I, Donald Toensing, do declare as follows:

1. I am currently employed by the United States Environmental Protection Agency (“EPA”), Region 7, as the Chief of the Waste Enforcement and Materials Management Branch in the Air and Waste Management Division. I have been employed at this position since 2004.

2. My duties include overseeing a staff of over twenty people who perform compliance and enforcement under the Resource Conservation and Recovery Act (RCRA), oversight of State RCRA enforcement programs, authorizing state RCRA programs, overseeing implementation of solid waste programs, and implementation of various programs promoting recycling and pollution prevention.

3. I have previously managed regional enforcement and permitting activities under the Clean Air Act (CAA) and Clean Water Act (CWA) as chief of the Air Permitting and Compliance Branch and chief of the Water Permitting/Compliance Section. I was branch chief in the Air Permitting and Compliance Branch for approximately 10 years and my duties included oversight of personnel who performed regional CAA enforcement activities, targeted air inspections and reviewed proposed State air permits. I was section chief in the Water Permitting/Compliance Section for approximately 16 years and my duties included oversight of personnel who performed regional CWA enforcement activities, targeted water inspections, and reviewed proposed state water permits.

4. During the past 25 years I have become familiar with the Defendants’ facilities in southeastern Missouri. I oversaw review of proposed permits for Doe Run facilities under the CAA and CWA. I oversaw the review of inspection reports for inspections conducted by EPA and the State under the CAA, the CWA and RCRA. Along with other programs I was involved

in taking and resolving prior enforcement actions against Doe Run facilities under the CAA, CWA and RCRA.

5. Doe Run produces lead and other metals from what is commonly known as the New Lead Belt, or Viburnum Trend, in southeastern Missouri which began producing lead in the mid-1960's. Ore from the mines is crushed, milled, and processed to remove the bulk of the host rock, creating lead and other metal concentrates. The milling process utilizes water and generates waste products called "tailings", which are pumped to tailings impoundments. Tailings consist primarily of dolomite rock and residual amounts of heavy metals, including lead, cadmium, and zinc. Doe Run's mine/mill facilities in southeast Missouri include: Brushy Creek Mine/Mill, Buick Mine/Mill, Fletcher Mine/Mill, Sweetwater Mine/Mill, Viburnum Mine/Mill, Viburnum Mine #35 (Casteel), and West Fork Unit.

6. The Herculaneum Lead Smelter facility (Smelter) has been operating for over 100 years and is the only remaining primary lead smelter in the United States. The smelter utilizes pyrometallurgical processes to smelt and refine the lead concentrate into lead and lead alloys. This process generates, among other by products, a waste product called slag, which is disposed of on-site in large piles. Slag contains residual amounts of heavy metals, including lead, cadmium, and zinc. Lead levels in slag can be as high as 30,000 parts per million.

7. I am familiar with the terms of the Consent Decree the United States lodged with this Court on October 8, 2010 in the above-referenced case, and re-filed with the Court as an attachment to the motion to enter the proposed Consent Decree filed by the United States. I understand that on December 21, 2011, the Court approved and entered the Consent Decree between Plaintiffs United States and the State and Defendants Doe Run (Doc. No. 116).

8. On March 4, 2013, the United States and the State of Missouri filed a first amendment to the Consent Decree (Doc. No. 130). The amendment is very limited in nature and affects only the Smelter. The amendment concerns the 12-month rolling limits for lead production and sulfur dioxide emissions at the Smelter.

9. Under Paragraph 14 of the Consent Decree, rather than install pollution controls, Doe Run decided to cease certain operations at the Smelter by December 31, 2013. In the interim, Paragraphs 19 and 20 of the Consent Decree impose several limits on the Smelter's operation including:

- a. 12-month rolling tonnage lead production limit of 130,000 tons,
- b. 12-month rolling sulfur dioxide (SO<sub>2</sub>) emissions limit of 18,501 tons,
- c. a lead emission limit of 1 pound per ton of lead produced, and
- d. SO<sub>2</sub> short term emissions limit of 223,700 pounds per day.

10. A 12-month rolling limit for lead production is determined by adding the monthly lead production for any given month to the lead production for the prior 11 months and the sum must be at or below the 12-month rolling limit. For example, for a 12-month rolling lead production limit of 130,000 tons for December 2013, this would mean that the lead production for the calendar year 2013 must be at or below 130,000 tons.

11. A facility must operate consistently from year to year in order to meet 12-month rolling limits such as those identified in Paragraph 10 above. This means that in order for the Smelter to meet the required 12-month rolling limits its current operation can be restricted by the operation of the Smelter over the previous year.

12. I was in attendance at a meeting with Doe Run representatives on August 29, 2012, at the offices of EPA, Region 7 in Kansas City, Kansas.<sup>1</sup> At this meeting representatives of Doe Run informed EPA that an electrical fire at the Smelter had required a shutdown of the facility for 56 days during March and April of 2012. During this shutdown Doe Run performed significant maintenance on the Smelter. Much of this maintenance is normally performed during a scheduled July shutdown period for the Smelter. As a result the Smelter facility did not shut down during July 2012 and operated at higher than normal monthly production rates for the second half of 2012. The Smelter facility did not violate any of the operating limits required by the Consent Decree in 2012. The Smelter could operate on a similar production schedule in 2013 as it did in 2012 and not violate the operating limits required by the Consent Decree.

13. Because of this lengthy shutdown in March/April, 2012, the Smelter would need to shut down in the March/April time frame of 2013 in order to meet the 12-month rolling limits required by Paragraph 19 and 20 of the Consent Decree. At the August 29, 2012, meeting Doe Run representatives requested that EPA amend the Consent Decree. The requested amendment would allow Doe Run to modify its Smelter operations in 2013 in order to produce lead on a more consistent basis similar to its operating schedule in 2011. The electrical fire at the Smelter facility in March 2012 had disrupted the Smelter operation in 2012 and Doe Run did not want to have to repeat this disruptive operation schedule in 2013. Doe Run requested an increase to the 12-month rolling limits for lead production and SO<sub>2</sub> emissions during a three month period in 2013 from April through June. Doe Run would not exceed the 130,000 ton lead production limit for the 2013 year and would reduce its 12-month rolling limit for SO<sub>2</sub> emissions from 18,501 tons to 17,264 tons beginning in August 2013 and continuing through the rest of 2013. The

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<sup>1</sup> EPA, Region 7 has since moved to new offices in Lenexa, Kansas.

request did not ask for any changes to the short term limits for lead emissions or SO<sub>2</sub> emissions. Therefore, Doe Run would meet the short term emission limits required by the Consent Decree.

14. In order to return to a more normal operating schedule, a temporary increase in the 12-month rolling limits for lead production would be necessary, because the facility would operate for nearly 15 months without a significant shut down period. The proposed increase of the 12-month rolling limit for lead production for April (9,139 tons), May (7,308 tons), and June (6,193 tons) would be offset by lesser lead production throughout the remainder of the year so that the 12-month rolling limit for calendar year 2013 would be at 130,000 tons.

15. Lead emissions at the Smelter are consistent with the amount of lead produced. Since 130,000 tons of lead would be produced in 2013, the same amount as in 2012, the lead emissions for 2013 from the Smelter should be similar to the lead emissions in 2012. The EPA does not anticipate any increase in lead emissions for calendar year 2013 by approving the amendment.

16. The EPA reviewed the proposal presented by Doe Run for amending the Consent Decree and determined that the amendment would be in the best interest of human health and the environment for several reasons.

17. First the lead emissions for 2013 would not increase because the same amount of lead would be produced during the 2013 year.

18. Second the 12-month rolling SO<sub>2</sub> emissions limit would decrease by 3,430 tons during the 2013 year. In 2013, the SO<sub>2</sub> emissions limit would increase by 2,755 tons in April through June. There would be an increase in the SO<sub>2</sub> emissions limit in April of 1,381 tons, an increase in May of 981 tons, and an increase in June of 393 tons. These increases would be offset by a decrease in the SO<sub>2</sub> emissions limit of 6,185 tons from August through December.

There would be a decrease in the SO<sub>2</sub> emissions limit of 1,237 tons each month for five months. The result is a net decrease in the SO<sub>2</sub> emissions limit of 3,430 tons. Doe Run would not only reduce the SO<sub>2</sub> emissions limit, it would also reduce the actual SO<sub>2</sub> emissions by 625 tons in calendar year 2013 as compared to the actual SO<sub>2</sub> emissions in calendar year 2012.

19. These lower emissions would be better for human health and the environment.

20. Defendants have represented to EPA that they are currently in compliance with all Consent Decree obligations.

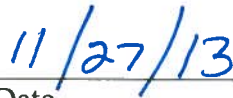
21. In accordance with Paragraph 247 of the Decree, I am one of the EPA officials to whom the Defendants must submit various notifications, reports, and other deliverables as required by the Decree. As of the date this Declaration was signed, based upon the deliverables the Defendants have submitted to EPA, Defendants have not missed any deadlines tied to the date the Decree was entered by the Court.

22. I understand the amendment to the Decree was published in the Federal Register and public comments were solicited. No comments were received.

23. I am familiar with EPA's files relevant to the Defendants' facilities. I am submitting this declaration in support of the United States' and the State of Missouri's motion requesting that the Court enter the Consent Decree Amendment.

Pursuant to 28 C.F.R. § 1746, I declare under penalty of perjury, based on my personal knowledge and review of records related to the Defendants' facilities, that the foregoing is true and correct to the best of my knowledge and belief.

  
Donald Toensing

  
Date